

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

**Forfeiture of General Lease No. S-4453, Jonathan P. and Mary Nani Spies,
Lessee Lot 24, Panaewa Farm lots, 2nd Series, Waiakea, South Hilo, Hawaii.
Tax Map Key: 3rd/2-4-49:08**

PURPOSE:

Forfeiture of General Lease No. S-4453 Jonathan P. Mary Nani Spies, Lessee.

LEGAL AUTHORITY:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Lot 24, Panaewa Farm Lots, 2nd Series, Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-4-49:08, consisting of approximately 10.021 acres, as shown on the attached map labeled Exhibit A

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

General agricultural-residential purposes.

TERM OF LEASE:

55 years, commencing on September 4, 1975 and expiring on September 3, 2030.

ANNUAL RENTAL:

\$4,000.00 payable in semi-annual payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease No. S-4453, Jonathan P. and Mary Nani Spies, Lessee, was served Notices of Default by certified mail, dated October 7, 2008, for:

- ☒ Failure to keep lease rental payments current
- ☐ Failure to post required performance bond
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy

Said notice, delivered via certified mail and received by the Lessee on **October 10, 2008**, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on **December 6, 2008**. As of November 28, 2008, this breach has not been cured.

Lessee was also served a Notice of Default by certified mail dated May 21, 2008 for:

- ☐ Failure to keep lease rental payments current
- ☐ Failure to post required performance bond
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy
- ☒ Other: **Pay County of Hawaii Real Property Taxes**

Said notice, accepted by the Lessee on **June 10, 2008**, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on **August 9, 2008**. As of **November 28, 2008**, this breach has not been cured.

As of November 28, 2008, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$2,000.00 for the time period from September 4, 2008 to March 3, 2009.

INSURANCE: The Lessee has posted the required liability/fire insurance policy.

PERFORMANCE BOND:

The Lessee has posted the required performance bond. This bond is in the form of a Time Deposit Account with the Bank of Hawaii.

CONSERVATION PLAN:

The Lessee had submitted a conservation plan for approval in January 1998. However, it was returned to the Lessee asking for clarification on the applied dates for activities currently on the property. No response or updates were received from the Lessee. At the present time, there is no approved conservation plan for this lease.

The Lessee has been served notice of default on several occasions during the previous five years.

PAST NOTICE OF DEFAULTS	
DATE	DEFAULT
4/28/08	RENT
10/05/07	RENT
5/18/07	FIRE INSURANCE
4/20/07	LIABILITY INSURANCE
3/29/07	RENT
9/21/06	RENT
3/21/06	RENT
9/16/05	RENT
4/08/05	RENT
9/22/03	RENT-FIRE INSURANCE
3/27/03	RENT

Lessee was served a notice of default on September 24, 1999 for failure to keep rental payments current. A submittal was prepared for the February 11, 2000 Board meeting. However, the Lessee cured the default two days prior to the Board meeting and the submittal was withdrawn from the meeting agenda.

The Lessee was again taken to the Board for forfeiture on April 12, 2001. This time for failure to use proceeds from an insurance payment resulting from the destruction of their residence as a result of a fire. The terms of the lease specifically require the Lessee to replace any structures that have been damaged or destroyed with the insurance proceeds or with the approval of the Board, they may surrender the lease and pay the balance owing on any mortgage with the remainder of the proceeds going to the Lessor and Lessee equally. The Lessee did neither and retained the proceeds while attempting to sell the lease to the adjacent nursery operation. At the Board meeting the Lessee testified that they were canceling the sale of the lease, will be replacing the structure with a warehouse/office facility, and would submit plans and all the necessary permits to the HDLO. Based on this testimony, the Board deferred the cancellation pending completion of the replacement structure.

The lessee has been in default for rent several times over the last five years of this lease. Most of these defaults have been cured either within the 60-day cure period or before the date of the Land Board meeting.

This matter being presented to the Board is very similar to previous cancellations the Board approved. In these instances, the Lessees' had been to the Board for cancellation on prior occasions and have extensive histories of making late payments for their rent. Staff feels that in order to be consistent with our policies regarding cancellations, we need to enforce these lease requirements.

Staff has made every effort to contact the Lessee with regards to this current default. Notices were sent by certified mail as well as regular priority mail. Staff also attempted to contact Lessee by telephone leaving messages on both the business and home phone numbers on file. In addition, a copy of the notice of default was posted on the gate of the subject property. A check in the amount of \$2,000.00 was hand delivered to the Hawaii District Land Office on December 1, 2007. However, our fiscal office informed staff that the account the check was drawn from had insufficient funds and is therefore being returned.

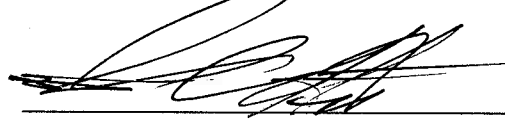
Staff is therefore recommending that the Board cancel General Lease No. S-4453 effective the date of this Board meeting.


RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-4453 in the manner specified by law;

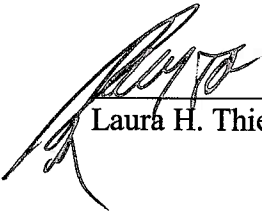
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-4453 as liquidated damages;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of December 12, 2008, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-4453 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



 Gordon C. Heit
Land Agent

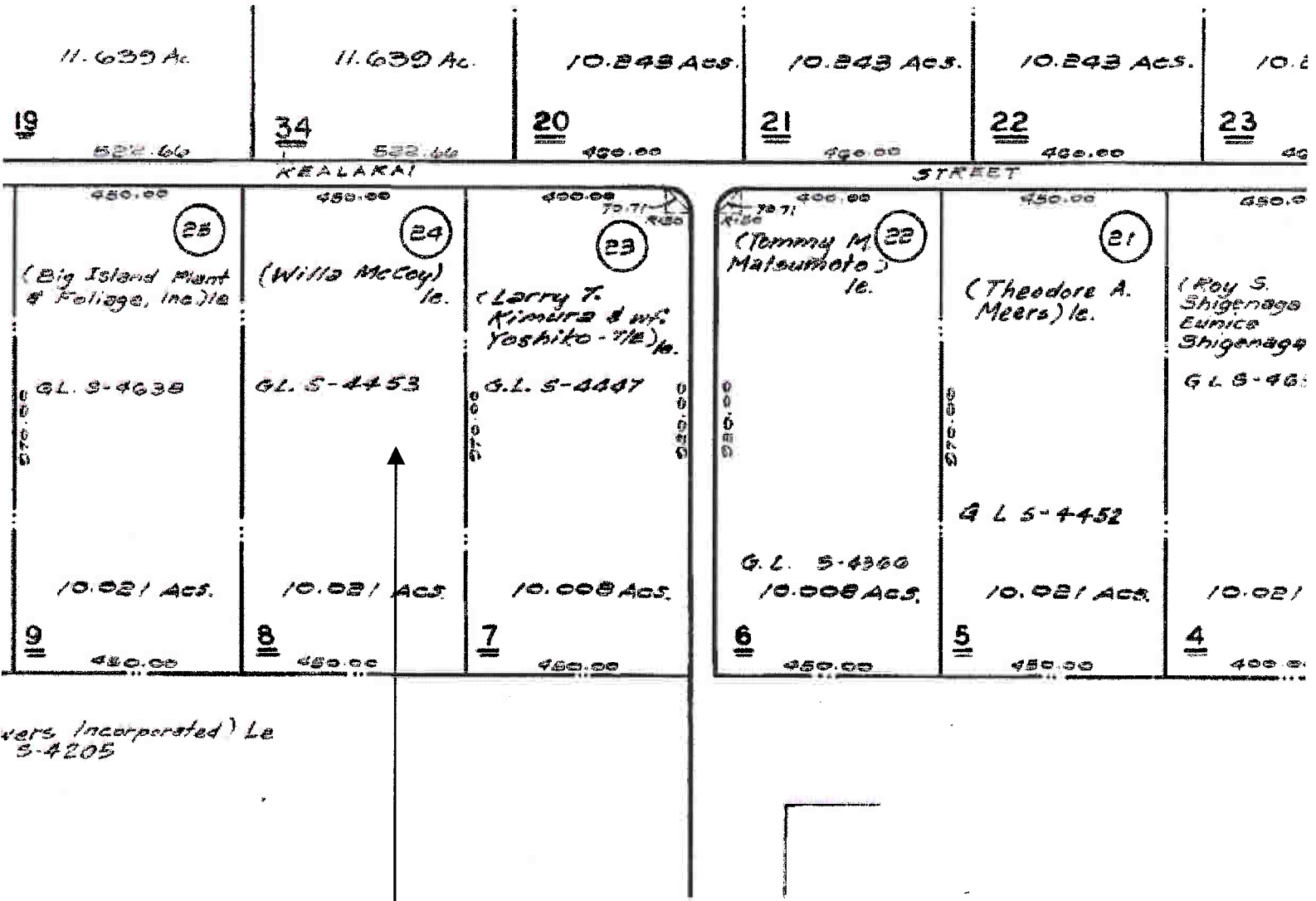
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

EXHIBIT A

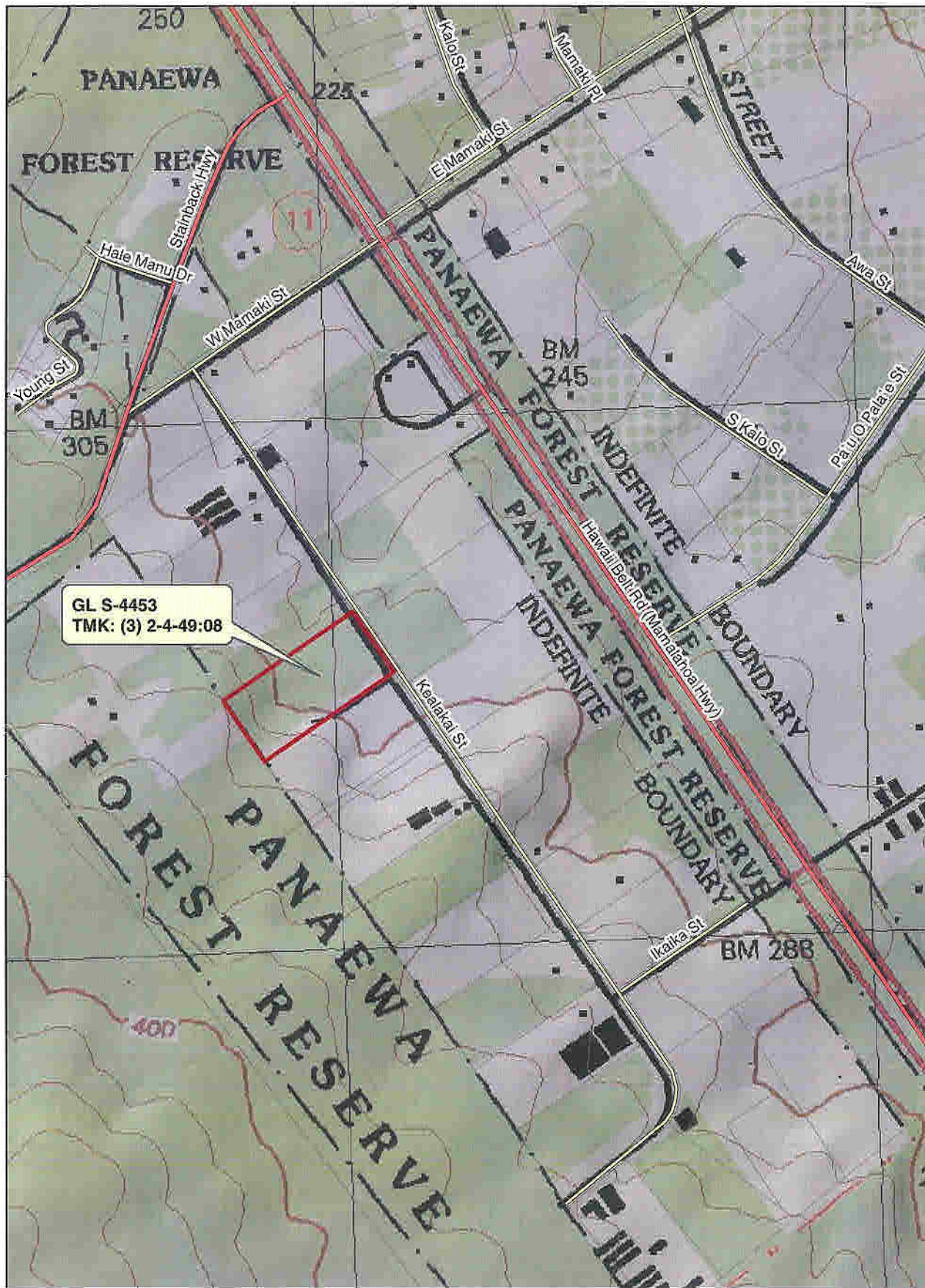
TMK: 3RD/2-4-49:08



SUBJECT PROPERTY

GL S-4453 Spies

EXHIBIT A



0 305 610 1,220 1,830 2,440
Feet

